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From: Rauchway, Jon
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Subject: Christian v. Atlantic Richfield
Appellant Brief.pdf

Hello Kate and Andy:

I just received the plaintiffs' opening brief in the mail today. In an unexpected turn, they decided to take on EPA's authority to prevent their restoration plan in this appeal. Here are some of the things they argue:

"The District Court's assumption that EPA would or could prevent a property owner from cleaning up his or her own property, using funds awarded by a jury for this purpose, is speculative and unrealistic." (at 28)

"CERCLA is entirely irrelevant to the Opportunity Citizen's common law claims, and the District Court committed reversible error by determining that the Opportunity Citizens' claims were somehow barred because EPA did not provide advance approval for the Opportunity Citizens' damage claims." (at 30)

"The District Court's conclusion that EPA must approve a common law restoration plan before damages are even awarded cannot be reconciled with Sunburst." (at 31)

It appears the plaintiffs are hoping to use this appeal as a vehicle to induce the Montana Supreme Court to make some pronouncement on the applicability of CERCLA to common law claims in Montana. Can we set up a call to discuss this development?

Regards,

Jon

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